

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRYCE FRANKLIN,

Petitioner,

v.

Case No. 2:22-cv-00427-MLG/GJF

ATTORNEY GENERAL FOR
THE STATE OF NEW MEXICO, et al.,

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION**

Magistrate Judge Gregory J. Fouratt filed the Proposed Findings and Recommended Disposition (“PFRD”) on May 14, 2024. Doc. 18. This PFRD recommends the Court deny Petitioner Bryce Franklin’s habeas petition, arising under 28 U.S.C. § 2241, Doc. 1, and dismiss his case with prejudice. Doc. 18. at 1, 10. Franklin alleges that he was denied due process during his disciplinary hearing when prison officials refused to allow him to question witnesses, failed to procure Franklin’s requested evidence or a staff member to represent him,¹ and made adverse findings against Franklin based on insufficient evidence of his culpability. *Id.* at 3-4; Doc. 1 at 3, 5.

The PFRD recommends denying each of Franklin’s arguments. Judge Fouratt rejected Franklin’s claims that the Disciplinary Officer erred in barring Franklin from presenting certain evidence during the proceedings, including the presentation of video footage and questions to the prison librarian. Doc. 18 at 6-9. Judge Fouratt also found that the inculpatory evidence against

¹ Franklin failed to raise this issue in his original petition but raised it only in his reply brief. *See generally* Doc. 1; Doc. 10 at 13. Accordingly, Judge Fouratt properly disposed of this argument as not properly before the Court. *Reedy v. Werholtz*, 660 F.3d 1270, 1275 (10th Cir. 2011).

Franklin was sufficient to satisfy the “some evidence” standard applicable to forgery cases brought against inmates. *Id.* at 10. Judge Fouratt concluded by finding that Franklin was “afforded all the due process required in a prison disciplinary proceeding.” *Id.*

The PFRD notified the parties of their ability to file objections within fourteen days and warned that failure to do so would waive appellate review. *Id.* Franklin filed his objections on June 5, 2024—more than one week after the expiration of the fourteen-day objection period.² Doc. 21.; *see generally* Fed. R. Civ. P. 72(b)(2); Fed. R. Civ. P. 6(a); D.N.M.LR Civ. 7.4(a). He objected broadly to “all adverse rulings in the [PFRD].” Doc. 21 at 1.

Objections to a magistrate judge’s proposed findings and recommended disposition “must be both timely and specific.” *Hobbs v. Las Cruces Pub. Schs. Bd. of Ed.*, No. CIV-0282, 2014 WL 936419, at *2 (D.N.M. Mar. 4, 2014) (citation omitted). Here, Franklin’s objections are neither. His objections were filed late, and he did not make specific objections to the PFRD’s findings. Nevertheless, the Court has considered the substance of Franklin’s objections.

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b), the Court has conducted a de novo review of the record and of the PFRD and considered the relevant objections. The Court finds no reason either in law or fact to depart from Judge Fouratt’s PFRD and will adopt the conclusions memorialized therein in full. Doc. 18. The Court will enter a separate final judgment pursuant to Federal Rule of Civil Procedure 58.

It is therefore ordered as follows:

1. Franklin’s objections to the Proposed Findings and Recommended Disposition, Doc. 18, are overruled.

² Typically, “the failure to make timely objection to the magistrate’s findings or recommendations waives appellate review of both factual and legal questions.” *Johnson v. Reyna*, 57 F.4th 769, 778 (10th Cir. 2023) (quoting *Moore v. United States*, 950 F.3d 656, 659 (10th Cir. 1991)). However, courts may opt to forego application of the rule in the interest of justice. *Id.*

2. Judge Fouratt's Proposed Findings and Recommended Disposition, Doc. 18, are adopted.
3. Franklin's motion for an evidentiary hearing, Doc. 22, is denied.
4. Franklin's habeas petition raised under 28 U.S.C. § 2241, Doc. 1, is denied and this civil case is dismissed with prejudice.



UNITED STATES DISTRICT JUDGE
MATTHEW L. GARCIA